

HB 1444 - S COMM AMD

By Committee on Health & Long-Term Care

ADOPTED 04/15/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 42.30.110 and 2001 c 216 s 1 are each amended to read
4 as follows:

5 (1) Nothing contained in this chapter may be construed to prevent
6 a governing body from holding an executive session during a regular or
7 special meeting:

8 (a) To consider matters affecting national security;

9 (b) To consider the selection of a site or the acquisition of real
10 estate by lease or purchase when public knowledge regarding such
11 consideration would cause a likelihood of increased price;

12 (c) To consider the minimum price at which real estate will be
13 offered for sale or lease when public knowledge regarding such
14 consideration would cause a likelihood of decreased price. However,
15 final action selling or leasing public property shall be taken in a
16 meeting open to the public;

17 (d) To review negotiations on the performance of publicly bid
18 contracts when public knowledge regarding such consideration would
19 cause a likelihood of increased costs;

20 (e) To consider, in the case of an export trading company,
21 financial and commercial information supplied by private persons to the
22 export trading company;

23 (f) To receive and evaluate complaints or charges brought against
24 a public officer or employee. However, upon the request of such
25 officer or employee, a public hearing or a meeting open to the public
26 shall be conducted upon such complaint or charge;

27 (g) To evaluate the qualifications of an applicant for public
28 employment or to review the performance of a public employee. However,
29 subject to RCW 42.30.140(4), discussion by a governing body of
30 salaries, wages, and other conditions of employment to be generally

1 applied within the agency shall occur in a meeting open to the public,
2 and when a governing body elects to take final action hiring, setting
3 the salary of an individual employee or class of employees, or
4 discharging or disciplining an employee, that action shall be taken in
5 a meeting open to the public;

6 (h) To evaluate the qualifications of a candidate for appointment
7 to elective office. However, any interview of such candidate and final
8 action appointing a candidate to elective office shall be in a meeting
9 open to the public;

10 (i) To discuss with legal counsel representing the agency matters
11 relating to agency enforcement actions, or to discuss with legal
12 counsel representing the agency litigation or potential litigation to
13 which the agency, the governing body, or a member acting in an official
14 capacity is, or is likely to become, a party, when public knowledge
15 regarding the discussion is likely to result in an adverse legal or
16 financial consequence to the agency.

17 This subsection (1)(i) does not permit a governing body to hold an
18 executive session solely because an attorney representing the agency is
19 present. For purposes of this subsection (1)(i), "potential
20 litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a)
21 concerning:

22 (A) Litigation that has been specifically threatened to which the
23 agency, the governing body, or a member acting in an official capacity
24 is, or is likely to become, a party;

25 (B) Litigation that the agency reasonably believes may be commenced
26 by or against the agency, the governing body, or a member acting in an
27 official capacity; or

28 (C) Litigation or legal risks of a proposed action or current
29 practice that the agency has identified when public discussion of the
30 litigation or legal risks is likely to result in an adverse legal or
31 financial consequence to the agency;

32 (j) To consider, in the case of the state library commission or its
33 advisory bodies, western library network prices, products, equipment,
34 and services, when such discussion would be likely to adversely affect
35 the network's ability to conduct business in a competitive economic
36 climate. However, final action on these matters shall be taken in a
37 meeting open to the public;

1 (k) To consider, in the case of the state investment board,
2 financial and commercial information when the information relates to
3 the investment of public trust or retirement funds and when public
4 knowledge regarding the discussion would result in loss to such funds
5 or in private loss to the providers of this information;

6 (1) To consider proprietary or confidential nonpublished
7 information related to the development, acquisition, or implementation
8 of state purchased health care services as provided in RCW 41.05.026.

9 (2) Before convening in executive session, the presiding officer of
10 a governing body shall publicly announce the purpose for excluding the
11 public from the meeting place, and the time when the executive session
12 will be concluded. The executive session may be extended to a stated
13 later time by announcement of the presiding officer.

14 **Sec. 2.** RCW 41.05.026 and 1991 c 79 s 1 are each amended to read
15 as follows:

16 (1) When soliciting proposals for the purpose of awarding contracts
17 for goods or services, the administrator shall, upon written request by
18 the bidder, exempt from public inspection and copying such proprietary
19 data, trade secrets, or other information contained in the bidder's
20 proposal that relate to the bidder's unique methods of conducting
21 business or of determining prices or premium rates to be charged for
22 services under terms of the proposal.

23 (2) When soliciting information for the development, acquisition,
24 or implementation of state purchased health care services, the
25 administrator shall, upon written request by the respondent, exempt
26 from public inspection and copying such proprietary data, trade
27 secrets, or other information submitted by the respondent that relate
28 to the respondent's unique methods of conducting business, data unique
29 to the product or services of the respondent, or to determining prices
30 or rates to be charged for services.

31 (3) Actuarial formulas, statistics, cost and utilization data, or
32 other proprietary information submitted upon request of the
33 administrator ((~~or~~)), board, or a technical review committee created to
34 facilitate the development, acquisition, or implementation of state
35 purchased health care under this chapter by a contracting insurer,
36 health care service contractor, health maintenance organization, ((~~or~~))

1 vendor, or other health services organization may be withheld at any
2 time from public inspection when necessary to preserve trade secrets or
3 prevent unfair competition.

4 ~~((3))~~ (4) The board, or a technical review committee created to
5 facilitate the development, acquisition, or implementation of state
6 purchased health care under this chapter, may hold an executive session
7 in accordance with chapter 42.30 RCW during any regular or special
8 meeting to discuss information submitted in accordance with subsections
9 (1) ~~((or (2)))~~ through (3) of this section.

10 (5) A person who challenges a request for or designation of
11 information as exempt under this section is entitled to seek judicial
12 review pursuant to chapter 42.17 RCW.

13 **Sec. 3.** RCW 42.17.310 and 2002 c 335 s 1, 2002 c 224 s 2, 2002 c
14 205 s 4, and 2002 c 172 s 1 are each reenacted and amended to read as
15 follows:

16 (1) The following are exempt from public inspection and copying:

17 (a) Personal information in any files maintained for students in
18 public schools, patients or clients of public institutions or public
19 health agencies, or welfare recipients.

20 (b) Personal information in files maintained for employees,
21 appointees, or elected officials of any public agency to the extent
22 that disclosure would violate their right to privacy.

23 (c) Information required of any taxpayer in connection with the
24 assessment or collection of any tax if the disclosure of the
25 information to other persons would (i) be prohibited to such persons by
26 RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the
27 taxpayer's right to privacy or result in unfair competitive
28 disadvantage to the taxpayer.

29 (d) Specific intelligence information and specific investigative
30 records compiled by investigative, law enforcement, and penology
31 agencies, and state agencies vested with the responsibility to
32 discipline members of any profession, the nondisclosure of which is
33 essential to effective law enforcement or for the protection of any
34 person's right to privacy.

35 (e) Information revealing the identity of persons who are witnesses
36 to or victims of crime or who file complaints with investigative, law

1 enforcement, or penology agencies, other than the public disclosure
2 commission, if disclosure would endanger any person's life, physical
3 safety, or property. If at the time a complaint is filed the
4 complainant, victim or witness indicates a desire for disclosure or
5 nondisclosure, such desire shall govern. However, all complaints filed
6 with the public disclosure commission about any elected official or
7 candidate for public office must be made in writing and signed by the
8 complainant under oath.

9 (f) Test questions, scoring keys, and other examination data used
10 to administer a license, employment, or academic examination.

11 (g) Except as provided by chapter 8.26 RCW, the contents of real
12 estate appraisals, made for or by any agency relative to the
13 acquisition or sale of property, until the project or prospective sale
14 is abandoned or until such time as all of the property has been
15 acquired or the property to which the sale appraisal relates is sold,
16 but in no event shall disclosure be denied for more than three years
17 after the appraisal.

18 (h) Valuable formulae, designs, drawings, computer source code or
19 object code, and research data obtained by any agency within five years
20 of the request for disclosure when disclosure would produce private
21 gain and public loss.

22 (i) Preliminary drafts, notes, recommendations, and intra-agency
23 memorandums in which opinions are expressed or policies formulated or
24 recommended except that a specific record shall not be exempt when
25 publicly cited by an agency in connection with any agency action.

26 (j) Records which are relevant to a controversy to which an agency
27 is a party but which records would not be available to another party
28 under the rules of pretrial discovery for causes pending in the
29 superior courts.

30 (k) Records, maps, or other information identifying the location of
31 archaeological sites in order to avoid the looting or depredation of
32 such sites.

33 (l) Any library record, the primary purpose of which is to maintain
34 control of library materials, or to gain access to information, which
35 discloses or could be used to disclose the identity of a library user.

36 (m) Financial information supplied by or on behalf of a person,
37 firm, or corporation for the purpose of qualifying to submit a bid or

1 proposal for (i) a ferry system construction or repair contract as
2 required by RCW 47.60.680 through 47.60.750 or (ii) highway
3 construction or improvement as required by RCW 47.28.070.

4 (n) Railroad company contracts filed prior to July 28, 1991, with
5 the utilities and transportation commission under RCW 81.34.070, except
6 that the summaries of the contracts are open to public inspection and
7 copying as otherwise provided by this chapter.

8 (o) Financial and commercial information and records supplied by
9 private persons pertaining to export services provided pursuant to
10 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to
11 export projects pursuant to RCW 43.23.035.

12 (p) Financial disclosures filed by private vocational schools under
13 chapters 28B.85 and 28C.10 RCW.

14 (q) Records filed with the utilities and transportation commission
15 or attorney general under RCW 80.04.095 that a court has determined are
16 confidential under RCW 80.04.095.

17 (r) Financial and commercial information and records supplied by
18 businesses or individuals during application for loans or program
19 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,
20 or during application for economic development loans or program
21 services provided by any local agency.

22 (s) Membership lists or lists of members or owners of interests of
23 units in timeshare projects, subdivisions, camping resorts,
24 condominiums, land developments, or common-interest communities
25 affiliated with such projects, regulated by the department of
26 licensing, in the files or possession of the department.

27 (t) All applications for public employment, including the names of
28 applicants, resumes, and other related materials submitted with respect
29 to an applicant.

30 (u) The residential addresses or residential telephone numbers of
31 employees or volunteers of a public agency which are held by any public
32 agency in personnel records, public employment related records, or
33 volunteer rosters, or are included in any mailing list of employees or
34 volunteers of any public agency.

35 (v) The residential addresses and residential telephone numbers of
36 the customers of a public utility contained in the records or lists
37 held by the public utility of which they are customers, except that

1 this information may be released to the division of child support or
2 the agency or firm providing child support enforcement for another
3 state under Title IV-D of the federal social security act, for the
4 establishment, enforcement, or modification of a support order.

5 (w)(i) The federal social security number of individuals governed
6 under chapter 18.130 RCW maintained in the files of the department of
7 health, except this exemption does not apply to requests made directly
8 to the department from federal, state, and local agencies of
9 government, and national and state licensing, credentialing,
10 investigatory, disciplinary, and examination organizations; (ii) the
11 current residential address and current residential telephone number of
12 a health care provider governed under chapter 18.130 RCW maintained in
13 the files of the department, if the provider requests that this
14 information be withheld from public inspection and copying, and
15 provides to the department an accurate alternate or business address
16 and business telephone number. On or after January 1, 1995, the
17 current residential address and residential telephone number of a
18 health care provider governed under RCW 18.130.040 maintained in the
19 files of the department shall automatically be withheld from public
20 inspection and copying unless the provider specifically requests the
21 information be released, and except as provided for under RCW
22 42.17.260(9).

23 (x) Information obtained by the board of pharmacy as provided in
24 RCW 69.45.090.

25 (y) Information obtained by the board of pharmacy or the department
26 of health and its representatives as provided in RCW 69.41.044,
27 69.41.280, and 18.64.420.

28 (z) Financial information, business plans, examination reports, and
29 any information produced or obtained in evaluating or examining a
30 business and industrial development corporation organized or seeking
31 certification under chapter 31.24 RCW.

32 (aa) Financial and commercial information supplied to the state
33 investment board by any person when the information relates to the
34 investment of public trust or retirement funds and when disclosure
35 would result in loss to such funds or in private loss to the providers
36 of this information.

37 (bb) Financial and valuable trade information under RCW 51.36.120.

1 (cc) Client records maintained by an agency that is a domestic
2 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape
3 crisis center as defined in RCW 70.125.030.

4 (dd) Information that identifies a person who, while an agency
5 employee: (i) Seeks advice, under an informal process established by
6 the employing agency, in order to ascertain his or her rights in
7 connection with a possible unfair practice under chapter 49.60 RCW
8 against the person; and (ii) requests his or her identity or any
9 identifying information not be disclosed.

10 (ee) Investigative records compiled by an employing agency
11 conducting a current investigation of a possible unfair practice under
12 chapter 49.60 RCW or of a possible violation of other federal, state,
13 or local laws prohibiting discrimination in employment.

14 (ff) Business related information protected from public inspection
15 and copying under RCW 15.86.110.

16 (gg) Financial, commercial, operations, and technical and research
17 information and data submitted to or obtained by the clean Washington
18 center in applications for, or delivery of, program services under
19 chapter 70.95H RCW.

20 (hh) Information and documents created specifically for, and
21 collected and maintained by a quality improvement committee pursuant to
22 RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW
23 4.24.250, regardless of which agency is in possession of the
24 information and documents.

25 (ii) Personal information in files maintained in a data base
26 created under RCW 43.07.360.

27 (jj) Financial and commercial information requested by the public
28 stadium authority from any person or organization that leases or uses
29 the stadium and exhibition center as defined in RCW 36.102.010.

30 (kk) Names of individuals residing in emergency or transitional
31 housing that are furnished to the department of revenue or a county
32 assessor in order to substantiate a claim for property tax exemption
33 under RCW 84.36.043.

34 (ll) The names, residential addresses, residential telephone
35 numbers, and other individually identifiable records held by an agency
36 in relation to a vanpool, carpool, or other ride-sharing program or

1 service. However, these records may be disclosed to other persons who
2 apply for ride-matching services and who need that information in order
3 to identify potential riders or drivers with whom to share rides.

4 (mm) The personally identifying information of current or former
5 participants or applicants in a paratransit or other transit service
6 operated for the benefit of persons with disabilities or elderly
7 persons.

8 (nn) The personally identifying information of persons who acquire
9 and use transit passes and other fare payment media including, but not
10 limited to, stored value smart cards and magnetic strip cards, except
11 that an agency may disclose this information to a person, employer,
12 educational institution, or other entity that is responsible, in whole
13 or in part, for payment of the cost of acquiring or using a transit
14 pass or other fare payment media, or to the news media when reporting
15 on public transportation or public safety. This information may also
16 be disclosed at the agency's discretion to governmental agencies or
17 groups concerned with public transportation or public safety.

18 (oo) Proprietary financial and commercial information that the
19 submitting entity, with review by the department of health,
20 specifically identifies at the time it is submitted and that is
21 provided to or obtained by the department of health in connection with
22 an application for, or the supervision of, an antitrust exemption
23 sought by the submitting entity under RCW 43.72.310. If a request for
24 such information is received, the submitting entity must be notified of
25 the request. Within ten business days of receipt of the notice, the
26 submitting entity shall provide a written statement of the continuing
27 need for confidentiality, which shall be provided to the requester.
28 Upon receipt of such notice, the department of health shall continue to
29 treat information designated under this section as exempt from
30 disclosure. If the requester initiates an action to compel disclosure
31 under this chapter, the submitting entity must be joined as a party to
32 demonstrate the continuing need for confidentiality.

33 (pp) Records maintained by the board of industrial insurance
34 appeals that are related to appeals of crime victims' compensation
35 claims filed with the board under RCW 7.68.110.

36 (qq) Financial and commercial information supplied by or on behalf

1 of a person, firm, corporation, or entity under chapter 28B.95 RCW
2 relating to the purchase or sale of tuition units and contracts for the
3 purchase of multiple tuition units.

4 (rr) Any records of investigative reports prepared by any state,
5 county, municipal, or other law enforcement agency pertaining to sex
6 offenses contained in chapter 9A.44 RCW or sexually violent offenses as
7 defined in RCW 71.09.020, which have been transferred to the Washington
8 association of sheriffs and police chiefs for permanent electronic
9 retention and retrieval pursuant to RCW 40.14.070(2)(b).

10 (ss) Credit card numbers, debit card numbers, electronic check
11 numbers, card expiration dates, or bank or other financial account
12 numbers supplied to an agency for the purpose of electronic transfer of
13 funds, except when disclosure is expressly required by law.

14 (tt) Financial information, including but not limited to account
15 numbers and values, and other identification numbers supplied by or on
16 behalf of a person, firm, corporation, limited liability company,
17 partnership, or other entity related to an application for a liquor
18 license, gambling license, or lottery retail license.

19 (uu) Records maintained by the employment security department and
20 subject to chapter 50.13 RCW if provided to another individual or
21 organization for operational, research, or evaluation purposes.

22 (vv) Individually identifiable information received by the work
23 force training and education coordinating board for research or
24 evaluation purposes.

25 (ww) Those portions of records assembled, prepared, or maintained
26 to prevent, mitigate, or respond to criminal terrorist acts, which are
27 acts that significantly disrupt the conduct of government or of the
28 general civilian population of the state or the United States and that
29 manifest an extreme indifference to human life, the public disclosure
30 of which would have a substantial likelihood of threatening public
31 safety, consisting of:

32 (i) Specific and unique vulnerability assessments or specific and
33 unique response or deployment plans, including compiled underlying data
34 collected in preparation of or essential to the assessments, or to the
35 response or deployment plans; and

36 (ii) Records not subject to public disclosure under federal law
37 that are shared by federal or international agencies, and information

1 prepared from national security briefings provided to state or local
2 government officials related to domestic preparedness for acts of
3 terrorism.

4 (xx) Commercial fishing catch data from logbooks required to be
5 provided to the department of fish and wildlife under RCW 77.12.047,
6 when the data identifies specific catch location, timing, or
7 methodology and the release of which would result in unfair competitive
8 disadvantage to the commercial fisher providing the catch data.
9 However, this information may be released to government agencies
10 concerned with the management of fish and wildlife resources.

11 (yy) Sensitive wildlife data obtained by the department of fish and
12 wildlife. However, sensitive wildlife data may be released to
13 government agencies concerned with the management of fish and wildlife
14 resources. Sensitive wildlife data includes:

15 (i) The nesting sites or specific locations of endangered species
16 designated under RCW 77.12.020, or threatened or sensitive species
17 classified by rule of the department of fish and wildlife;

18 (ii) Radio frequencies used in, or locational data generated by,
19 telemetry studies; or

20 (iii) Other location data that could compromise the viability of a
21 specific fish or wildlife population, and where at least one of the
22 following criteria are met:

23 (A) The species has a known commercial or black market value;

24 (B) There is a history of malicious take of that species; or

25 (C) There is a known demand to visit, take, or disturb, and the
26 species behavior or ecology renders it especially vulnerable or the
27 species has an extremely limited distribution and concentration.

28 (zz) The personally identifying information of persons who acquire
29 recreational licenses under RCW 77.32.010 or commercial licenses under
30 chapter 77.65 or 77.70 RCW, except name, address of contact used by the
31 department, and type of license, endorsement, or tag. However, the
32 department of fish and wildlife may disclose personally identifying
33 information to:

34 (i) Government agencies concerned with the management of fish and
35 wildlife resources;

36 (ii) The department of social and health services, child support

1 division, and to the department of licensing in order to implement RCW
2 77.32.014 and 46.20.291; and

3 (iii) Law enforcement agencies for the purpose of firearm
4 possession enforcement under RCW 9.41.040.

5 (aaa)(i) Discharge papers of a veteran of the armed forces of the
6 United States filed at the office of the county auditor before July 1,
7 2002, that have not been commingled with other recorded documents.
8 These records will be available only to the veteran, the veteran's next
9 of kin, a deceased veteran's properly appointed personal representative
10 or executor, a person holding that veteran's general power of attorney,
11 or to anyone else designated in writing by that veteran to receive the
12 records.

13 (ii) Discharge papers of a veteran of the armed forces of the
14 United States filed at the office of the county auditor before July 1,
15 2002, that have been commingled with other records, if the veteran has
16 recorded a "request for exemption from public disclosure of discharge
17 papers" with the county auditor. If such a request has been recorded,
18 these records may be released only to the veteran filing the papers,
19 the veteran's next of kin, a deceased veteran's properly appointed
20 personal representative or executor, a person holding the veteran's
21 general power of attorney, or anyone else designated in writing by the
22 veteran to receive the records.

23 (iii) Discharge papers of a veteran filed at the office of the
24 county auditor after June 30, 2002, are not public records, but will be
25 available only to the veteran, the veteran's next of kin, a deceased
26 veteran's properly appointed personal representative or executor, a
27 person holding the veteran's general power of attorney, or anyone else
28 designated in writing by the veteran to receive the records.

29 (iv) For the purposes of this subsection (1)(aaa), next of kin of
30 deceased veterans have the same rights to full access to the record.
31 Next of kin are the veteran's widow or widower who has not remarried,
32 son, daughter, father, mother, brother, and sister.

33 (bbb) Those portions of records containing specific and unique
34 vulnerability assessments or specific and unique emergency and escape
35 response plans at a city, county, or state adult or juvenile
36 correctional facility, the public disclosure of which would have a

1 substantial likelihood of threatening the security of a city, county,
2 or state adult or juvenile correctional facility or any individual's
3 safety.

4 (ccc) Information compiled by school districts or schools in the
5 development of their comprehensive safe school plans pursuant to RCW
6 28A.320.125, to the extent that they identify specific vulnerabilities
7 of school districts and each individual school.

8 (ddd) Information regarding the infrastructure and security of
9 computer and telecommunications networks, consisting of security
10 passwords, security access codes and programs, access codes for secure
11 software applications, security and service recovery plans, security
12 risk assessments, and security test results to the extent that they
13 identify specific system vulnerabilities.

14 (eee) Information obtained and exempted or withheld from public
15 inspection by the health care authority under RCW 41.05.026, whether
16 retained by the authority, transferred to another state purchased
17 health care program by the authority, or transferred by the authority
18 to a technical review committee created to facilitate the development,
19 acquisition, or implementation of state purchased health care under
20 chapter 41.05 RCW.

21 (fff) Proprietary data, trade secrets, or other information that
22 relates to: (i) A vendor's unique methods of conducting business; (ii)
23 data unique to the product or services of the vendor; or (iii)
24 determining prices or rates to be charged for services, submitted by
25 any vendor to the department of social and health services for purposes
26 of the development, acquisition, or implementation of state purchased
27 health care as defined in RCW 41.05.011.

28 (2) Except for information described in subsection (1)(c)(i) of
29 this section and confidential income data exempted from public
30 inspection pursuant to RCW 84.40.020, the exemptions of this section
31 are inapplicable to the extent that information, the disclosure of
32 which would violate personal privacy or vital governmental interests,
33 can be deleted from the specific records sought. No exemption may be
34 construed to permit the nondisclosure of statistical information not
35 descriptive of any readily identifiable person or persons.

36 (3) Inspection or copying of any specific records exempt under the
37 provisions of this section may be permitted if the superior court in

1 the county in which the record is maintained finds, after a hearing
2 with notice thereof to every person in interest and the agency, that
3 the exemption of such records is clearly unnecessary to protect any
4 individual's right of privacy or any vital governmental function.

5 (4) Agency responses refusing, in whole or in part, inspection of
6 any public record shall include a statement of the specific exemption
7 authorizing the withholding of the record (or part) and a brief
8 explanation of how the exemption applies to the record withheld."

HB 1444 - S COMM AMD

By Committee on Health & Long-Term Care

ADOPTED 04/15/2003

9 On page 1, line 2 of the title, after "purchasing;" strike the
10 remainder of the title and insert "amending RCW 42.30.110 and
11 41.05.026; and reenacting and amending RCW 42.17.310."

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